

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JOANN COLLINS,

Plaintiff,

v.

AETNA LIFE INSURANCE  
COMPANY and ABC CORP.,

Defendants.

NO: 12-CV-5049-TOR

PROTECTIVE ORDER

BEFORE THE COURT is the parties' request for a stipulated protective order regarding confidential documents. This request was submitted to the Court informally, via electronic mail on December 6, 2012, and does not otherwise appear in the Electronic Case Filing system of the court. Having reviewed the stipulation and proposed order, the Court hereby orders as follows:

1. Identification of Confidential Information. The parties shall designate materials that constitute Confidential Information by placing on, or affixing to, each document the word "Confidential." To designate Confidential Information

1 consisting of multi-page documents bound together by staples or other binding,  
2 only the first page need be stamped or marked "Confidential," provided, however,  
3 that if a multi-page document contains both allegedly confidential and non-  
4 confidential information, then the designating party shall indicate plainly on the  
5 document itself or in a cover memorandum which portions contain confidential  
6 information. Should the party receiving discovery material marked "confidential"  
7 dispute whether the material qualifies as "confidential," or contains "a trade secret  
8 or other confidential research, development, or commercial information," *see* Fed.  
9 R. Civ. P. 26(c)(1)(G), the party may challenge the designation by filing a short  
10 objection regarding the designation and arranging for a prompt telephonic  
11 discovery status conference with the Court.

12       2.     Protection of Confidentiality. Confidential Information and any notes,  
13 summaries, digests, memoranda, exhibits or other documents produced which  
14 include or describe Confidential Information, shall be retained by the parties'  
15 respective litigation counsel and shall not be disclosed to any person except as  
16 provided herein. Persons to whom access to Confidential Information is given  
17 pursuant to this Order shall keep such information and any copies, abstracts,  
18 digests or summaries and descriptions thereof secure in accordance with the  
19 purposes and intent of this Order.

1           3.     Access to Confidential Information. The parties shall be governed by  
2 the following restrictions in its use of the Confidential Information produced to it  
3 and as to the information derived therefrom:

4           A.     Such Confidential Information may not be disclosed except as  
5 is necessary for the purpose of, and solely in connection with, litigating this case.  
6 For that purpose only, the parties' respective counsel may disclose such  
7 information to the Court and its employees, court reporters, independent expert  
8 witnesses or potential expert witnesses retained by counsel, and such other persons  
9 as may be agreed upon by the parties in the future, said agreement to be in writing  
10 signed by counsel for all parties.

11           B.     Before disclosure of Confidential Information to any person as  
12 permitted by the preceding paragraph (other than the Court and its employees),  
13 such person shall read a copy of this Order and sign an Agreement To Respect  
14 Confidential Information prepared by the parties. Counsel shall maintain a copy of  
15 all Agreements signed by such persons and shall furnish copies to opposing  
16 counsel upon request. No Confidential Information shall be disclosed to any  
17 person who refuses or has failed to sign the Agreement. In the event any person  
18 who has signed an Agreement refuses to comply therewith or fails to adhere to the  
19 terms thereof, counsel shall make no further disclosure to such person and shall  
20 immediately notify its opposing counsel in writing.

1           4.     Limitation on Copying. Confidential Information may be copied and  
2 summaries, digests or abstracts may be made, but all such copies, digests, abstracts  
3 and summaries shall be considered Confidential and shall be subject to the  
4 provisions of this Order.

5           5.     Depositions. Nothing in this Order shall prevent the use by counsel of  
6 Confidential Information at depositions, with appropriate safeguards. At any  
7 deposition or portion thereof in which Confidential Information will be disclosed,  
8 counsel may require the deposition witness and/or court reporter to read and sign  
9 an Agreement if he or she has not already done so. Upon the request of counsel,  
10 deposition or other testimony shall be designated "Confidential" by the court  
11 reporter transcribing the deposition and marked "Confidential" by the court  
12 reporter, provided however, that if a deposition contains both allegedly  
13 confidential and non-confidential information, then only the confidential portion  
14 thereof shall be so designated. Counsel shall additionally have thirty (30) days  
15 after the deposition transcript has been made available to designate those portions  
16 of the deposition testimony or exhibits which he deems to contain or reveal  
17 Confidential Information. If documents or information designated Confidential are  
18 used in other depositions, such documents or information, and all portions of the  
19 transcript of such depositions and exhibits thereto which refer or relate to such  
20

1 documents or information, shall be treated as Confidential Information and, if filed  
2 with the Court, shall be filed under seal.

3       6.     Confidential Information to be Filed with Court Under Seal. If and  
4 only if a party seeks to use Confidential Information in a pleading, the document(s)  
5 designated Confidential according to this Order and those portions of any pleading  
6 that refer directly or indirectly to such Confidential Information shall be filed  
7 separately under seal when the pleading is filed. Any document(s) filed under seal  
8 pursuant to this paragraph must be accompanied by a motion to seal the  
9 document(s). Should the Court deny the motion to seal, any party shall have the  
10 opportunity to move to strike the document from the record. Documents filed as  
11 sealed by a party cannot remain sealed without further order of the Court because  
12 there is a strong presumption in favor of public access to court documents. *See*  
13 *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006).  
14 Accordingly, a party seeking to seal a judicial record must so move the Court and  
15 bears the burden of overcoming the presumption. *Kamakana*, 447 F.3d at 1178. In  
16 the case of documents filed in support of a dispositive motion, the “compelling  
17 reasons” standard applies, and “[t]he party must “articulate [ ] compelling reasons  
18 supported by specific factual findings . . . that outweigh the general history of  
19 access and the public policies favoring disclosure, such as the public interest in  
20 understanding the judicial process.” *Kamakana*, 447 F.3d at 1178–79 (internal

1 quotations omitted). With regard to non-dispositive motions, “a particularized  
2 showing under the good cause standard of Rule 26(c) will suffice to warrant  
3 preserving the secrecy of sealed discovery material.” *Kamakana*, 447 F.3d at 1180  
4 (internal citations and quotations omitted).

5 All portions of the pleadings, motions, briefs, memoranda or other  
6 documents filed with the Court purporting to reproduce, summarize or paraphrase  
7 Confidential Information shall be filed in sealed envelopes or other appropriate  
8 sealed containers on which shall be endorsed the title of this action, an indication  
9 of the nature of the contents of such sealed envelope or other container, the words  
10 “Confidential Information” and a statement substantially in the following form:

11 **CONFIDENTIAL**

12 **This envelope contains information which has been**  
13 **designated as Confidential and is not to be opened**  
14 **and its contents are not to be disclosed to any person**  
15 **other than the Court or its Clerks except by Order of**  
16 **the Court, or upon the stipulation of the parties.**

17 7. References in Open Court. Confidential Information may be used by  
18 Counsel for Plaintiff in connection with any hearing or trial in this matter.

19 8. Legal Process. In the event a recipient of Confidential Information  
20 produced in connection with this action receives any subpoena, other legal process

1 or request directed at compelling the production of Confidential Information, that  
2 recipient shall immediately notify opposing counsel in writing, so as to afford it  
3 ample opportunity to contest that subpoena, legal process or request.

4 9. Disposition on Termination of Action. Within 60 days of the entry of  
5 an Order finally terminating this action, including all appeals, and unless the  
6 parties' respective counsel agree otherwise, in writing, counsel for each party and  
7 any other person receiving Confidential Information shall assemble and turn over  
8 to the opposing party's counsel, all materials, documents, summaries, digests and  
9 abstracts containing Confidential Information and all copies thereof which were  
10 produced by said party, provided, however that counsel may retain one set of  
11 pleadings, documents filed with the Court and depositions, and may retain any  
12 documents and copies thereof which are work product, said materials to remain  
13 subject to this Order. As to any items retained by counsel which were produced by  
14 the opposing party, a complete list of said items must be provided to the opposing  
15 party's counsel within the sixty (60) day period of the entry of an Order finally  
16 terminating this action.

17 10. Costs, Damages and Sanctions. Counsel acknowledge that they may  
18 be subject to sanctions for breach of this Order and agree to reimburse the  
19 opposing party for all reasonable attorney's fees and costs incurred as a result of a  
20 successful action seeking sanctions for breach of this Order and/or to enforce this

1 Order. Nothing in this Order limits the parties' right to pursue other legal or  
2 equitable remedies available to it resulting from a breach of this Order.

3 **IT IS SO ORDERED.**

4 The District Court Executive is hereby directed to enter this Order and  
5 provide copies to counsel.

6 **DATED** this 14<sup>th</sup> day of January, 2013.

7 *s/ Thomas O. Rice*

8 THOMAS O. RICE  
9 United States District Judge